popularity of another's trademark. *Lea v. Wolly*, 15 Abb. Practice N. S. (N. Y.) 5. And further where the geographical name, as applied to a certain article of commerce, has acquired a secondary meaning; *Seixo v. Provezende.* L. R. 1 Ch. 192; as where an injunction was issued against the defendant, restraining them from the use of the word Aberon as applied to cements *Newman v. Alvord*, 51 N. Y. 189, or for the use of personal names as trademarks. No man has the right to represent his goods as those of another of the same name, *Burgess v. Burgess*, 3 D. M. and G. 896; for while one is entitled to sell his own product under his own name, yet in doing so he must be careful not to do anything to injure another having the same name. *Walter Baker & Co., Ltd. v. Baker*, 77 Fed. 181. And if the plaintiff has first acquired a reputation for the particular kind of goods, the defendant may be enjoined from selling like goods, except in connection with a clear statement indicating that they are not the goods of the plaintiff. *Allegretti Chocolate Cream Co. v. Kellar*, 85 Fed. 643.

TRADE NAMES—ACQUISITION OF PROPERTY THEREIN—PROTECTION FROM INTERFERENCE.—COHEN V. NAGLE ET AL., 76 N. E. 276.—*Held*, that where a manufacturer of an article has acquired a right of property in a name applied to the article of manufacture, it is fraud on him for another to use the word in selling a similar article in such a way as to mislead the public.

In an early case it was held that while every trader has some particular device, there is no reason for granting an injunction to restrain one trader from using the same mark with another. *Blanchard v. Hill*, 2 Atk. 484. Beginning in 1783 with the case of *Singleton v. Bolton*, 3 Dong. 393 and in 1803, *Hogg v. Kirby*, 8 Ves. 215, there has been established the uniform fundamental principle of the right of protection to a trader in the use of his trade device. The principle of the court is two-fold. The public have the right to know goods of a manufacturer by his mark on them and he has a right to all benefits resulting from this knowledge. *Congress Spring Co. v. Rock S. C.*, 45 N. Y., 291. A name or mark may be valid as such and subject to exclusive use, even though since adoption it has become the common appellative of the article to which it is applied. *Celluloid Mfg. Co. v. Reid*, 47 Fed. 712. One may not use his own name in a manner intended to defraud the public. *Brown Chem. Co. v. Meyer*, 139 U. S. 540. In *El Models Cigar Mfg. Co. v. Gato*, 25 Fla. 886, the defendant in error used his own name E. H. Gato as a mark for his cigars, which the plaintiffs in error marked their cigars with the name of a junior member of the firm G. H. Gates. This was done to take advantage of former's reputation and was fraud.

TRIAL—INSTRUCTIONS—INVADING PROVINCE OF JURY — CREDIBILITY OF WITNESSES.—CHICAGO UNION TRACTION CO. V. O'BRIEN, 76 N. E. 341. (ILL.).—*Held*, that there is no presumption of law that an unimpeached witness has testified truly, and an instruction to that effect is erroneous, as infringing on the province of the jury.

It is not an error of law for the court, in its charge, in commenting upon the testimony of a witness, to express an opinion as to his honesty. *Hoffman v. N. Y. Cent. & Hud. Riv. R. R. Co.*, 87 N. Y. 25. Moreover, the court may instruct the jury as to the rules of evidence. *Lampe v. Kennedy*, 60 Wis. 110. But the credibility of witnesses and the effect of the testimony given are matters coming within the exclusive province of the jury. *Holloway v. Com.*, 74 Ky. (11 Bush) 344. And so it is error for the court, in its

instructions to assume the truth of any fact in controversy. *Finch v. Bergins*, 89 Ind. 360. And an instruction by the judge to the jury that they are bound to believe a witness unless he has been impeached is erroneous. *St. v. Smallwood*, 75 N. C. 104. The jury have the power to refuse their credit. *The Charleston Ins. & Trust Co. v. Carver*, 2 Gill (Md.) 427. They are the exclusive judges of the credibility of witnesses. *U. S. v. Hughes*, 34 Fed. Rep. 732. And further, they are under no legal obligation to believe it if, from all the facts proved in the case, they think the testimony not reliable. *Creed v. People*, 81 Ill. 569.